

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CONSTANCE S. HERRERA SHANNON)	
Claimant)	
VS.)	
)	Docket Nos. 135,173 & 184,177
U.S.D. NO. 383)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
SECURITY NATIONAL INSURANCE COMPANY)	
Insurance Carriers)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

On January 23, 1997, the Application of the Workers Compensation Fund for review by the Workers Compensation Appeals Board of an Award entered by Assistant Director Brad E. Avery on July 23, 1996, came on for oral argument in Topeka, Kansas.

APPEARANCES

Claimant appeared by and through her attorney, John J. Bryan of Topeka, Kansas. Respondent and its insurance carrier, Liberty Mutual Insurance Company, appeared by and through their attorney, Billy E. Newman of Topeka, Kansas. Respondent and its insurance carrier, Security National Insurance Company, appeared by and through their attorney, Matthew S. Crowley appearing for Robert L. Roberts of Topeka, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Jeff K. Cooper of Topeka, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Assistant Law Director are herein adopted by the Appeals Board.

ISSUES

Docket No. 135,173

- (1) Whether claimant's injury is attributable to the March 1987 accident or to the February 1988 accident.
- (2) Whether claimant is entitled to unauthorized and future medical compensation.

Docket No. 184,177

- (1) Notice and prejudice.
- (2) Timely written claim.
- (3) Whether the claimant suffered personal injury by accident arising out of and in the course of her employment on February 3, 1988.
- (4) The liability of the Kansas Workers Compensation Fund.
- (5) The nature and extent of claimant's disability. (This issue was rendered moot at oral argument by the parties' stipulation that claimant is permanently and totally disabled.)
- (6) Medical reimbursement.
- (7) Reimbursement of insurance carrier, pursuant to K.S.A. 44-569a.
- (8) Future medical benefits.
- (9) Objections to exhibits.
- (10) Motion and objection to terminal date extension.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Award of the Assistant Director sets out findings of fact and conclusions of law in detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Assistant Director are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues stated.

Claimant suffered two injuries while working for U.S.D. No. 383. The first occurred on March 5, 1987, and the second occurred on February 3, 1988. At oral argument the parties stipulated that claimant was permanently and totally disabled as the result of the injuries suffered on the above dates. The issues remaining to be decided dealt with whether claimant's injuries and disabilities resulted from the first date of accident or the second date of accident.

The Assistant Director found claimant to have suffered an accident on March 5, 1987, which entitled claimant to additional temporary total disability compensation and medical benefits. The primary focus of the Award dealt with the injuries sustained on February 3, 1988. Subsequent to that time claimant was unable to return to work with respondent and has since been permanently and totally disabled. The evidence in the record supports a finding that claimant did suffer accidental injuries on both of the dates above specified with the resulting permanent total disability coming primarily from the accident of February 3, 1988.

The findings by the Assistant Director that respondent had received notice and that written claim had been timely made are supported by the evidence in the record. It is acknowledged that respondent was aware of claimant's activities on February 3, 1988, and the fact that she had to leave her employment at that time due to the injury as they had to provide a substitute for her.

The Appeals Board, in adopting the Award of the Assistant Director, finds that the liability was appropriately computed and that the assessment of the entire award in Docket No. 184,177 to the Kansas Workers Compensation Fund is justified by the evidence.

AWARD

Docket No. 135,173

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Assistant Director Brad E. Avery dated July 23, 1996, should be, and is hereby, affirmed in all respects and an award of compensation is hereby made in accordance with the findings in favor of the claimant, Constance S. Herrera Shannon, and against the respondent, U.S.D. No. 383, and the insurance carrier, Liberty Mutual Insurance

Company, for an accidental injury sustained on March 5, 1987. Claimant is awarded 25.14 weeks temporary total disability compensation at the rate of \$247 per week totalling \$6,209.58, all of which is due and owing at the time of this award to be paid in one lump sum less amounts previously paid.

Docket No. 184,177

WHEREFORE, an additional award of compensation is hereby made in accordance with the above findings in favor of the claimant, Constance S. Herrera Shannon, and against the respondent, U.S.D. No. 383, and its insurance carrier, Security National Insurance Company, and the Kansas Workers Compensation Fund, for an accidental injury sustained on February 3, 1988.

Claimant is entitled to 275.14 weeks temporary total disability compensation at the rate of \$256 per week totalling \$70,435.87, followed by permanent total disability compensation at the rate of \$256 per week for 213.14 weeks at the rate of \$256 per week totaling \$54,564.13, for a total award not to exceed \$125,000.

As of February 6, 1997, claimant would be entitled to 275.14 weeks temporary total disability compensation at the rate of \$256 per week totaling \$70,435.87, followed by 194.86 weeks permanent total disability compensation at the rate of \$256 per week in the amount of \$49,884.16, for a total amount due and owing of \$120,320.03 which is ordered paid in one lump sum minus amounts previously paid. Thereafter the remaining balance shall be paid at the rate of \$256 per week until fully paid or until further order of the director with a total award not to exceed \$125,000 for a permanent total general body disability.

Claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical benefits are awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

Claimant's contract for attorney fees is approved insofar as it is not in contravention to K.S.A. 44-536.

The Kansas Workers Compensation Fund is hereby ordered to reimburse respondent and its insurance carrier, Security National Insurance Company, for any and all funds expended in this matter for temporary total disability compensation, permanent partial disability compensation, permanent total disability compensation, costs, medical expenses, and fees per the Award of the Assistant Director.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the Workers Compensation Fund to be paid as follows:

Appino & Biggs Reporting Service

Transcript of Regular Hearing	\$429.20
Deposition of Constance Shannon	627.70
Deposition of Phillip Baker, M.D.	433.40
Deposition of Phillip Baker, M.D.	278.00
Gene Dolginoff Associates, Ltd.	
Deposition of Daniel Zimmerman, M.D.	987.30
Metropolitan Court Reporters, Inc.	
Deposition of Don Miskew, M.D.	672.00
Owens, Brake, Cowan & Associates	
Deposition of Monta Harris	662.50
Deposition of Garnet Reagan	229.00

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Billy E. Newman, Topeka, KS
Matthew S. Crowley, Topeka, KS
Jeff K. Cooper, Topeka, KS
Brad E. Avery, Assistant Director
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director